

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Gregory E. Davis :
219 Norwood Street :
Mont Clare, PA 19453 :

Plaintiff :
: **Civil Action**
: No. 16 - _____
v.
: Assigned to: _____, J.

WiPro Limited :
c/o CT Corporation System :
Suite 320 :
116 Pine Street :
Harrisburg, PA 17101 :
Defendants :

COMPLAINT

Gregory E. Davis, Plaintiff, by his attorney, Jana R. Barnett, Esq., sues WiPro Limited, and alleges as follows:

I. INTRODUCTION

1. This is an action seeking redress for violations of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, *et seq.*, as well as redress for violations of state statutes arising out of the same case or controversy.
2. With regard to the Fair Labor Standards Act claims, Gregory E. Davis seeks equitable and monetary relief for the unlawful actions of WiPro Limited, including back pay, liquidated damages, attorney's fees and expenses, and all other relief to which he is entitled pursuant to the Fair Labor Standards Act.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiff's Fair Labor Standards Act claims pursuant to 28 U.S.C. §1331, and 29 U.S.C. § 216(b). This Court has jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1337 because the claims arising under state law are so related to the claims arising under Fair Labor Standards Act that they form the same case

or controversy.

4. Venue in this district is appropriate pursuant to 28 U.S.C. §1391(b). The unlawful acts and practices of WiPro Limited were committed within the Eastern District of Pennsylvania (specifically, Berks County).

III. PARTIES

5. Plaintiff Gregory E. Davis ("Mr. Davis") is an adult citizen of the Commonwealth of Pennsylvania who resides in Montgomery County, Pennsylvania. His address is 219 Norwood Street, Mont Clare, PA 19609.
6. Defendant WiPro Limited is a foreign corporation which is headquartered in East Brunswick, New Jersey, and which is registered or qualified to do business in the Commonwealth of Pennsylvania. It is in the business of providing IT services, including but not limited to consulting and information systems outsourcing. At all times relevant hereto, WiPro Limited's employees worked at St. Joseph Medical Center in Bern Township, Berks County, Pennsylvania and at the Catholic Health Initiatives in Exton, Chester County, Pennsylvania. The Pennsylvania Corporation Bureau lists its address at c/o CT Corporation System.

IV. FACTUAL BACKGROUND

7. Mr. Davis attended orientation in New Jersey on October 19, 2014 as a condition of employment.
8. Mr. Davis worked for Wipro Limited from October 19th, 2014 through October 16, 2015, providing on-site support services at both St. Joseph Medical Center and Catholic Health Initiatives beginning on October 22, 2014.
9. Mr. Davis was responsible for responding to tickets created by the help desk and to phone calls and in-person requests from end users to fix problems with desktop computers, laptop computers, and software.
10. Mr. Davis was a nonexempt employee within the meaning of the Fair Labor Standards Act and the Pennsylvania Minimum Wage Act.
11. WiPro Limited knew that Mr. Davis was a nonexempt employee within the meaning of the Fair Labor Standards Act and the Pennsylvania Minimum Wage Act:

12. WiPro Limited knew that the duties which assigned to Mr. Davis did not qualify for any exemption to the overtime provisions of either the Fair Labor Standards Act or the Pennsylvania Minimum Wage Act.
13. WiPro Limited correctly classified as nonexempt other employees who worked in the same facilities as Mr. Davis and who had the same position as Mr. Davis.
14. When WiPro Limited misclassified as nonexempt other employees who worked in the same facilities as Mr. Davis and who had the same position as Mr. Davis, WiPro paid them back wages.
15. Despite knowing that Mr. Davis should be classified as a nonexempt employee, WiPro Limited reclassified Mr. Davis as an exempt employee on October 22, 2014.
16. WiPro Limited's misclassification of Mr. Davis was deliberate.
17. Because Mr. Davis was a nonexempt employee, WiPro Limited had a legal obligation to pay Mr. Davis for all time which it suffered or permitted him to work.
18. WiPro Limited did not pay Mr. Davis for all time worked.
19. For example, WiPro Limited required Mr. Davis to attend orientation in East Brunswick, New Jersey on October 20 and 21, 2014, but did not pay Mr. Davis for traveling to and from orientation, or for attending more than eight (8) hours of orientation on the 20th and 21st.
20. Beginning in October 2014, Mr. Davis notified WiPro Limited, both verbally and in writing, that WiPro Limited had incorrectly classified him as an exempt employee.
21. The persons notified of Mr. Davis' misclassification included but were not limited to Paromita Bhattacharjee (Human Resources); Yangnesh Eswaran (Human Resources); Wividus Hrd (Human Resources); Shammuga ("Shan") Pandian (Tower Head, EUC Services); Joseph Puleo (Team Lead); Veempata Mogan ("Mogan") Rao (Region 1 Lead, Client Computing); and Ahmed Wajid (HR Executive, USA Benefits - Wipro Technologies).
22. Mr. Pandian agreed that Mr. Davis had been misclassified as an exempt employee.
23. In meetings attended by Joe Puleo, Mogan Rao and Mr. Davis, Messrs. Puleo and Rao admitted that Mr. Davis had been misclassified, and promised to fix the problem and pay Mr. Davis all back pay which WiPro Limited owed him.
24. The promised "fixes" were not made.

25. Because WiPro Limited misclassified him as an exempt employee, Mr. Davis was prevented from following procedures and entering overtime worked.
26. WiPro Limited was aware that its misclassification prevented Mr. Davis from entering overtime worked.
27. Even though Mr. Davis was prevented from entering overtime worked, WiPro Limited knew the dates and times that Mr. Davis worked because Mr. Davis recorded the time worked on timesheets that were submitted to Wipro Limited.
28. Throughout his employment, Mr. Davis worked more than forty (40) hours per week all weeks except three.
29. WiPro Limited paid Mr. Davis at the rate of time and a half for some time worked in excess of forty (40) hours per week, but did not pay Mr. Davis at the rate of time and one half for all time worked in excess of forty (40) hours in a single work week.
30. Mr. Davis was “on call”, or “waiting to be engaged”, approximately once every one to three weeks.
31. WiPro Limited promised to pay Mr. Davis a flat fee of \$20.00 for being on call during weekdays, a flat fee of \$30.00 for being on call on weekends and holidays, in addition to actual hours worked.
32. WiPro did not correctly pay Mr. Davis for oncall work, in that WiPro Limited did not include on call pay as part of the base pay when calculating overtime owed Mr. Davis.
33. Mr. Davis was not the only employee to bring concerns about misclassification to the attention of management; other employees who worked in the same facility as Mr. Davis with the same responsibilities as Mr. Davis voiced concerns about being misclassified as exempt before Mr. Davis began working for WiPro Limited.
34. Beginning on June 1, 2015, Wipro Limited delayed approvals of overtime, and either refused to pay for time worked on time, if at all.
35. The dates and times for which WiPro Limited is required by law to pay Mr. Davis are indicated on Exhibit 1, which is attached and incorporated by reference.

VI. CLAIMS

FIRST COUNT

**(Violation of Fair Labor Standards Act of 1938, as amended
29 U.S.C. §201, et seq.)**

36. Paragraphs 1 through 35 are incorporated by reference.
37. Plaintiff Gregory E. Davis is an employee within the meaning of the Fair Labor Standards Act.
38. Defendant WiPro Limited is an employer within the meaning of the Fair Labor Standards Act. It is engaged in interstate commerce, selling goods or materials that have been moved in or produced for interstate commerce. Its annual dollar volume of business exceeded five hundred thousand dollars during each of the past three years.
39. WiPro Limited was required by law to pay Mr. Davis for all time worked and for at least one and one-half times his regular rate of pay for hours worked in excess of forty (40) hours per week.
40. Mr. Davis' regular rate of pay consisted of the weekly payments, on-call pay, and quarterly bonuses.
41. WiPro Limited failed to pay Mr. Davis for time which it suffered or permitted him to work.
42. WiPro Limited failed to pay Mr. Davis for time worked in excess of forty (40) hours per week at the rate of time and a half.
43. WiPro Limited failed to calculate Mr. Davis' overtime correctly, in that it did not include oncall time in the base rate and did not pay him for all time suffered or permitted to work.
44. WiPro Limited failed to pay Mr. Davis wages within the time periods established by law.

WHEREFORE Mr. Davis prays that this Honorable Court enter an order granting him:

- a. Unpaid compensation (including but not limited to all time suffered or permitted to work, and all time worked in excess of forty (40) hours per week at the rate of time and a half) throughout the term of his employment;
- b. Liquidated damages;
- c. Attorney's fees and expenses;

- d. Interest; and
- e. Such other and further relief to which he is entitled by law.

SECOND COUNT

VIOLATION OF THE PENNSYLVANIA MINIMUM WAGE ACT OF 1968,
43 P.S. §333, et seq.

- 45. Paragraphs 1 through 35 are incorporated by reference as though set forth in full.
- 46. Plaintiff Gregory E. Davis is an employee within the meaning of the Pennsylvania Minimum Wage Act of 1968.
- 47. Defendant Wipro Limited is an employer within the meaning of the Pennsylvania Minimum Wage Act, in that it was a corporation . . . acting, directly or indirectly, in the interest of an employer in relation to any employee.
- 48. WiPro Limited was required by law to pay Mr. Davis for all time worked and for at least one and one-half times his regular rate of pay for hours worked in excess of forty (40) hours per week.
- 49. Mr. Davis' regular rate of pay consisted of the weekly payments, as well as the monthly commissions (pro rated weekly) and bonuses.
- 50. WiPro Limited failed to pay Mr. Davis for time which it suffered or permitted him to work.
- 51. WiPro Limited failed to pay Mr. Davis for time worked in excess of forty (40) hours per week at the rate of time and a half.
- 52. WiPro Limited failed to calculate Mr. Davis' overtime correctly, in that it did not include oncall time in the base rate and did not pay him for all time suffered or permitted to work.
- 53. WiPro Limited failed to pay Mr. Davis wages within the time periods established by law.

WHEREFORE Mr. Davis prays that this Honorable Court enter an order granting him:

- a. Unpaid compensation (including but not limited to all time worked in excess of forty (40) hours per week at the rate of time and a half) throughout the term of his employment;
- b. Attorney's fees and expenses;
- c. Interest; and

d. Such other and further relief to which he is entitled by law.

THIRD COUNT

VIOLATION OF THE WAGE PAYMENT AND COLLECTION LAW,
43 P.S. §260, et seq.

54. Paragraphs 1 through 53 are incorporated by reference as though set forth in full.

55. WiPro Limited is an “employer” within the meaning of the Pennsylvania Wage Payment and Collection Law.

56. WiPro Limited had a legal obligation under the Wage Payment and Collection Law to pay employees such as Mr. Davis all wages due him on regular paydays designated in advance by the Employer.

57. WiPro Limited failed to pay Mr. Davis all straight time, or all overtime wages due him by the date that they were due.

WHEREFORE Mr. Davis prays that this Honorable Court enter an order granting him:

- a. Unpaid compensation (including but not limited to all straight time, and all time worked in excess of forty (40) hours per week at the rate of time and a half);
- b. Liquidated damages;
- c. Attorney’s fees and expenses;
- d. Interest; and
- e. Such other and further relief to which he is entitled by law.



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Dated: October 11, 2016

Week	OT hours	on call pay	QPLC	base	pre-OT rate	calculated base rate	OT Prem	Base OT	OT Total	OT Received	Difference	QPLC Value	OT Paid Date	Reg. Time Paid Date	QPLC OT Paid	QPLC Base Paid	QPLC Paid Date	paid late	unpaid	unpaid WPCL	late WPCL
10/13/14 to 10/19/14	0	0	0	43.98	21.99	21.99	0.00	0.00	0.00	0.00	0.00	0.00		0	0.00			43.98			
10/20/14 to 10/26/14	6	0	97.8	1123.87	21.99	24.43	73.29	146.61	219.90	0.00	219.90	22.01	11/7/2014	0	97.8	1/30/2015		219.90			
10/27/14 to 11/2/14	2	0	97.8	1026.13	21.99	24.43	48.87	73.30	0.00	73.30	7.34		11/7/2014	0	97.8	1/30/2015		73.30			
11/3/14 to 11/9/14	11	160	97.8	1406.05	21.99	27.57	151.64	268.79	420.43	0.00	420.43	40.34	11/21/2014	0	97.8	1/30/2015		420.43			
11/10/14 to 11/16/14	2	0	97.8	1026.13	21.99	24.43	24.43	48.87	73.30	0.00	73.30	7.34	11/21/2014	0	97.8	1/30/2015		73.30			
11/17/14 to 11/23/14	2.25	0	97.8	1032.24	21.99	24.43	27.48	54.98	82.46	0.00	82.46	8.25	12/5/2014	0	97.8	1/30/2015		82.46			
11/24/14 to 11/30/14	6.5	160	97.8	1296.09	21.99	27.87	90.58	158.83	249.41	0.00	249.41	23.84	12/5/2014	0	97.8	1/30/2015		249.41			
12/1/14 to 12/7/14	4	0	97.8	1075.00	21.99	24.43	48.86	97.74	146.60	0.00	146.60	14.67	12/19/2014	0	97.8	1/30/2015		146.60			
12/8/14 to 12/14/14	4	0	97.8	1075.00	21.99	24.43	48.86	97.74	146.60	0.00	146.60	14.67	12/19/2014	0	97.8	1/30/2015		146.60			
12/15/14 to 12/21/14	13	160	97.8	1454.92	21.99	27.45	178.43	317.66	496.09	0.00	496.09	47.68	12/31/2014	0	97.8	1/30/2015		496.09			
12/22/14 to 12/28/14	0	0	97.8	977.26	21.99	24.43	0.00	0.00	0.00	0.00	0.00	0.00	12/31/2014	0	97.8	1/30/2015					
12/29/14 to 1/4/15	4.5	0	82.15	1069.81	21.99	24.04	54.09	108.20	162.29	0.00	162.29	13.86		1/16/2015	0	82.15	5/22/2015		162.29		
1/5/15 to 1/11/15	3	160	82.15	1193.74	21.99	27.76	41.64	72.13	113.77	0.00	113.77	9.24		1/16/2015	0	82.15	5/22/2015		113.77		
1/12/15 to 1/18/15	6	0	82.15	1105.87	21.99	24.04	72.12	144.26	216.38	0.00	216.38	18.48		1/30/2015	0	82.15	5/22/2015		216.38		
1/19/15 to 1/25/15	4.25	0	82.15	1063.80	21.99	24.04	51.09	102.19	153.28	0.00	153.28	13.09		1/30/2015	0	82.15	5/22/2015		153.28		
1/26/15 to 2/1/15	22.25	160	82.15	1656.58	21.99	26.61	296.04	534.97	831.01	0.00	831.01	68.54		2/13/2015	0	82.15	5/22/2015		831.01		
2/2/15 to 2/8/15	2	0	82.15	1009.70	21.99	24.04	24.04	48.09	72.13	0.00	72.13	6.16		2/13/2015	0	82.15	5/22/2015		72.13		
2/9/15 to 2/15/15	7.25	0	82.15	1135.93	21.99	24.04	87.15	174.32	261.47	0.00	261.47	22.33		2/27/2015	0	82.15	5/22/2015		261.47		
2/16/15 to 2/22/15	27.5	160	82.15	1782.81	21.99	26.41	363.14	661.20	1024.34	0.00	1024.34	84.72		2/27/2015	0	82.15	5/22/2015		1024.34		
2/23/15 to 3/1/15	11.5	0	82.15	1238.11	21.99	24.04	138.23	276.50	414.73	379.33	-0.06	35.43	3/27/2015	3/13/2015	35.46	82.15	5/8/2015	397.33			
3/2/15 to 3/8/15	6	0	82.15	1105.87	21.99	24.04	72.12	144.26	216.38	197.91	-0.03	18.48	3/27/2015	3/13/2015	18.5	82.15	5/8/2015				
3/9/15 to 3/15/15	12	160	82.15	1410.14	21.99	27.12	162.72	288.53	451.25	395.82	18.43	36.97	3/27/2015	3/27/2015	37	82.15	5/8/2015		18.43		
3/16/15 to 3/22/15	12	0	82.15	1250.14	21.99	24.04	144.24	288.53	432.77	395.82	-0.05	36.97	4/10/2015	3/27/2015	37	82.15	5/8/2015				
3/23/15 to 3/29/15	15.5	0	82.15	1334.29	21.99	24.04	186.31	372.68	558.99	511.27	-0.07	47.75	4/10/2015	4/10/2015	47.79	82.15	5/8/2015				
3/30/15 to 4/5/15	15.25	160	82.15	1488.28	21.99	26.94	205.42	366.67	572.09	502.90	22.21	46.98	4/24/2015	4/10/2015	46.98	82.15	7/31/2015		22.21		
4/6/15 to 4/12/15	8	0	82.15	1153.96	21.99	24.04	96.16	192.35	288.51	263.82	0.04	24.65	4/24/2015	4/24/2015	24.65	82.15	7/31/2015				
4/13/15 to 4/19/15	17.5	0	82.15	1382.38	21.99	24.04	210.35	420.77	631.12	577.16	0.05	53.91	5/8/2015	4/24/2015	53.91	82.15	7/31/2015				
4/20/15 to 4/26/15	16	160	82.15	1506.31	21.99	26.90	215.20	384.70	599.90	527.69	22.92	49.29	5/8/2015	5/8/2015	49.29	82.15	7/31/2015		22.92		
4/27/15 to 5/3/15	10.5	0	82.15	1214.07	21.99	24.04	126.21	252.46	378.67	346.27	0.06	32.35	5/22/2015	5/8/2015	32.34	82.15	7/31/2015				
5/4/15 to 5/10/15	16.75	160	82.15	1524.34	21.99	26.86	224.95	402.73	627.68	552.39	23.69	51.60	5/22/2015	5/22/2015	51.60	82.15	7/31/2015		23.69		
5/11/15 to 5/17/15	9	0	82.15	1178.00	21.99	24.04	108.18	216.39	324.57	296.87	-0.02	27.73	6/5/2015	5/22/2015	27.72	82.15	7/31/2015				
5/18/15 to 5/24/15	9.5	160	82.15	1350.03	21.99	27.27	129.53	288.42	357.95	313.36	15.33	29.27	6/5/2015	6/5/2015	29.26	82.15	7/31/2015		15.33		
5/25/15 to 5/31/15	6	0	82.15	1105.87	21.99	24.04	72.12	144.26	216.38	197.91	-0.01	18.48	6/19/2015	6/5/2015	18.48	82.15	7/31/2015				
6/1/15 to 6/7/15	21.25	0	82.15	1472.54	21.99	24.04	255.43	510.93	766.36	700.87	0.03	65.46	7/2/2015	6/19/2015	65.46	82.15	7/31/2015	700.87			
6/8/15 to 6/14/15	10	0	82.15	1202.05	21.99	24.04	120.20	240.44	360.64	329.79	0.05	30.81	7/2/2015	6/19/2015	30.80	82.15	7/31/2015				
6/15/15 to 6/21/15	16	160	82.15	1506.31	21.99	26.90	215.20	384.70	599.90	527.70	22.91	49.29	7/2/2015	7/2/2015	49.29	82.15	7/31/2015		22.91		
6/22/15 to 6/28/15	7	0	82.15	1129.92	21.99	24.04	84.14	168.31	252.45	252.45	21.56		7/2/2015	0	82.15	7/31/2015		252.45			
6/29/15 to 7/5/15	6.75	40	82.15	1163.91	21.99	24.90	84.04	162.30	246.34	222.47	23.87	20.79	7/17/2015	7/17/2015	0	73.94	12/4/2015		23.87	8.21	73.94
7/6/15 to 7/12/15	8.5	160	82.15	1325.98	21.99	27.34	216.20	304.37	320.57	320.57	26.19		7/17/2015	0	73.94	12/4/2015		320.57	8.21	73.94	
7/13/15 to 7/19/15	8.5	0	82.15	1165.98	21.99	24.04	102.17	204.37	306.54	306.54	26.19		7/31/2015	0	73.94	12/4/2015		306.54	8.21	73.94	
7/20/15 to 7/26/15	14	160	82.15	1458.22	21.99	27.00	189.00	336.61	525.61	461.76	63.85	43.13	10/9/2015	7/31/2015	0	73.94	12/4/2015	461.76	63.85	8.21	73.94
7/27/15 to 8/2/15	16.5	0	82.15	1358.33	21.99	24.04	198.33	396.72	595.05	544.21	50.84	50.83	10/9/2015	8/14/2015	0	73.94	12/4/2015	544.21	50.84	8.21	73.94
8/3/15 to 8/9/15	0	0	82.15	961.61	21.99	24.04	0.00	0.00	0.00	0.00	0.00	0.00		8/14/2015	0	73.94	12/4/2015			8.21	73.94
8/10/15 to 8/16/15	0	0	82.15	961.61	21.99	24.04	0.00	0.00	0.00	0.00	0.00	0.00		8/28/2015	0	73.94	12/4/2015			8.21	73.94
8/17/15 to 8/23/15	20.75	160	82.15	1620.52	21.99	26.68	276.81	498.91	775.72	684.15	91.57	63.92	9/25/2015	8/28/2015	0	73.94	12/4/2015	684.15	91.57	8.21	73.94
8/24/15 to 8/30/15	9.75	0	82.15	1196.04	21.99	24.04	117.20	234.43	351.63	321.47	30.16	30.04	9/25/2015	9/11/2015	0	73.94	12/4/2015	321.47	30.16	8.21	73.94
8/31/15 to 9/6/15	8.75	160	82.15	1331.99	21.99	27.32	119.53	210.38	329.91	288.50	41.41	26.96	9/25/2015	9/11/2015	0	73.94	12/4/2015		41.41	8.21	73.94
9/7/15 to 9/13/15	5	0	82.15	1081.83	21.99	24.04	60.10	120.22	180.32	164.89	15.43	15.43	10/9/2015	9/25/2015	0	73.94	12/4/2015	164.89	15.43	8.21	73.94
9/14/15 to 9/20/15	11.5	160	82.15	1398.11	21.99	27.15	156.11	276.50	432.61	379.29	53.32	35.43	10/9/2015	9/25/2015	0	73.94	12/4/2015		53.32	48.21	73.94
9/21/15 to 9/27/15																					